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**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY**

DIANA FLEMING,)
)
Plaintiff,)
) Case No.:
v.)
) COMPLAINT AND DEMAND FOR JURY
ASSOCIATED CREDIT SERVICES, INC.,) TRIAL
)
Defendant.) (Unlawful Debt Collection Practices)
)

COMPLAINT

DIANA FLEMING (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against ASSOCIATED CREDIT SERVICES, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692 *et seq.* and the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227.

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states

1 that such actions may be brought and heard before “any appropriate United States
2 district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this
3 court original jurisdiction of all civil actions arising under the laws of the United States.

4 3. Defendant conducts business in the State of New Jersey, and as such, personal
5 jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. §1391 (b)(2).
7

8 **PARTIES**

9 5. Plaintiff is a natural person residing in Stanhope, New Jersey 07874.

10 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692 a(3).
11

12 7. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).
13

14 8. Defendant is a national debt collection company with its corporate headquarters
located at 115 Flanders Rd., Suite 140, Westborough, MA 01581.

15 9. Defendant collects, and attempts to collect, consumer debts incurred, or alleged
16 to have been incurred, for personal, family or household purposes on behalf of creditors and
17 debt buyers using the U.S. Mail, telephone and/or internet.

18 10. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §1692 a(6),
19 and sought to collect a debt from Plaintiff.

20 11. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).
21

22 12. Defendant acted through its agents, employees, officers, members, directors,
23 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
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FACTUAL ALLEGATIONS

13. Plaintiff has a cellular telephone that she has had for over two years.

14. Plaintiff has only used this telephone as a cellular telephone.

15. Defendant was attempting to collect an alleged consumer debt from Plaintiff.

16. The alleged debt at issue arose out of transactions that were primarily for personal, family or household purposes, relating to a 2014 debt owed to First Energy.

17. Beginning sometime in early July 2015, and continuing thereafter, Defendant's collectors placed repeated harassing telephone calls to Plaintiff's cellular telephone in its attempt to collect the debt.

18. Defendant has placed telephone calls to Plaintiff from (201) 942-5309. The undersigned has confirmed that this telephone number belongs to Defendant.

19. When placing these calls to Plaintiff, Defendant used an automatic telephone dialing system and/or pre-recorded voice.

20. Plaintiff knew that Defendant was using an automatic telephone dialing system and/or pre-recorded voice as an automated message would play at the outset of a call.

21. Defendant's calls were not for emergency purposes, but rather to collect a debt.

22. Upon initial communication, Plaintiff informed Defendant in early July 2015 that she was could not afford to make any payments and to stop calling her.

23. Despite Plaintiff advising Defendant to stop calling as she was not able to make any payments, Defendant continued to call her cellular telephone number.

24. Once Defendant was aware that its calls were unwanted, any further calls could only have been for the purpose of harassing and coercing payment from Plaintiff.

COUNT II
DEFENDANT VIOLATED §§ 1692e, 1692e(5) AND 1692e(10) OF THE FDCPA

34. A debt collector violates § 1692e by using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

35. A debt collector violates § 1692e(5) by threatening to take any action that cannot legally be taken or that is not intended to be taken.

36. A debt collector violates § 1692e(10) by use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

37. Defendant violated §§ 1692e, 1692e(5) and 1692e(10) when it threatened to take legal action against Plaintiff without the intend to take such actions.

COUNT III
DEFENDANT VIOLATED THE TCPA

38. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

39. Defendant initiated automated calls to Plaintiff using an automatic telephone dialing system.

40. Defendant's calls to Plaintiff were not made for emergency purposes, but rather to attempt to collect a debt relating to First Energy.

41. Defendant's calls to Plaintiff after early July 2015 were not made with Plaintiff's prior express consent.

1 42. The acts and/or omissions of Defendant were done unfairly, unlawfully,
2 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
3 defense, legal justification or legal excuse.

4 43. Defendant's acts as described above were done with malicious, intentional,
5 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
6 purpose of harassing Plaintiff.

7 44. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
8 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
9 damages.

10
11 WHEREFORE, Plaintiff, DIANA FLEMING, respectfully prays for judgment as
12 follows:

- 13 a. All actual damages suffered by Plaintiff pursuant to 15 U.S.C.
14 §1692(k)(a)(1);
- 15 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
16 15 U.S.C. §1692 (k)(a)(2)(A);
- 17 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
18 expenses incurred by Plaintiff pursuant to 15 U.S.C. §1693 (k)(a)(3);
- 19 d. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- 20 e. Statutory damages of \$500.00 per violative telephone call pursuant to 47
21 U.S.C. § 227(b)(3)(B);
- 22 f. Treble damages of \$1,500.00 per violative telephone call pursuant to 47
23 U.S.C. §227(b)(3);
- 24 g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- 25

1 h. Any other relief deemed appropriate by this Honorable Court.

2
3 **DEMAND FOR JURY TRIAL**

4 PLEASE TAKE NOTICE that Plaintiff, DIANA FLEMING, demands a jury trial in this
5 case.

6
7 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

8 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not
9 subject to any other action pending in any court, arbitration or administrative proceeding.
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11
12 Respectfully submitted,

13 Dated: 6/10/16

14 By: /s/ Amy L. Bennecoff Ginsburg
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